

POLICE/SHERIFF'S DEPARTMENT		GENERAL ORDER	
SUBJECT: Arrests		NUMBER: 2-4	
EFFECTIVE DATE: July 1, 1999		REVIEW DATE:	
AMENDS/SUPERSEDES: GO 2-4, January 1988		APPROVED: _____ Chief of Police/Sheriff	
CALEA STANDARDS: 1.2.5-.6, 61.1.2, 74.1, 74.3, 82.3.7-.8		VLEPSC STANDARDS: ADM.02.04-.05, ADM.25.01, ADM.25.10, OPR.12.02, OPR.12.06, OPR.04.02	

NOTE

This order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS

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I. POLICY

Short of the application of force, an arrest is the most serious action an officer can undertake. An arrest can cause repercussions throughout a person's life, even if eventually found not guilty or never brought to trial. The most important legal question facing an officer at the moment of an arrest is the existence of probable cause: without probable cause, the arrest is illegal and the evidence of criminality that was obtained because of the arrest is inadmissible. Officers shall accordingly exercise critical judgment in making arrests. Critical judgment includes consideration for bystanders, the time, place, and location of offenses, and the use of force in making the arrests. Officers shall consider alternatives to arrest consistent with their law-enforcement mission.

II. PURPOSE

To define the authority of officers to arrest and the mechanism for making arrests with and without a warrant.

III. DEFINITIONS

A. Arrest

An arrest is a seizure of a person. An arrest is supported by probable cause. Generally, according to Fourth Amendment cases, the test of whether an arrest has taken place is whether a reasonable person under the circumstances would have felt free to leave. Limitations:

1. *Virginia Code* § 19.2-249 further provides that if an offense occurs at the town/county boundary, or within 300 yards of the boundary, officers in either jurisdiction may take enforcement action.
2. § 19.2-250 provides that in criminal cases the jurisdiction of the department shall extend one mile beyond the corporate limits. *[Note: This is not true in reverse. A county cannot extend jurisdiction one mile into a town or city. Also, this statute lists exceptions based on the population of the town or the population density of the county.]* With the exception of hot pursuit (see GO 2-9), if an officer acts beyond one mile of the town limits, his or her status becomes that of private citizen.

[Jurisdictional concerns should be carefully delineated. Some localities have reciprocal, cooperative, or mutual aid agreements which concern the prerogative of arrest.]

B. Probable cause

According to the U.S. Supreme Court, "Probable cause exists where the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed" and that the person to be arrested committed it.

1. An officer must have probable cause to make an arrest.
2. When an officer has probable cause, he or she may undertake a search incident to an arrest, record the suspect's fingerprints as the situation requires, take the suspect's photograph, and jail him. Probable cause also supports a complete body search (as opposed to a body-cavity search) subject to the conditions listed under GO 2-5. The aim of probable cause is **to make a formal charge**.

IV. DISCRETION

- A. Officers shall demonstrate discretionary judgment. Discretion shall be applied reasonably and shall be guided by the oath of office, the limits of authority as established by law, the decisions and interpretations of the courts, the written orders of our department, and the oral instruction provided by field supervisors.
- B. Officers shall not make arrests based on or affected by a person's sex, race, creed, color, general or assumed attitude, ethnic or natural origin, disabilities, or sexual orientation.
- C. Officers have four forms of discretionary authority when making arrests: no arrest at all, an informal resolution of the incident or problem, issuance of a summons, or a full-custody arrest.
 - 1. Informal resolutions take the form of referrals to other agencies, mediating agreements between two or more parties, or issuance of a warning. Informal resolutions are the least coercive of all enforcement measures and shall be applied when stronger enforcement methods are unnecessary or inappropriate under the circumstances.
- D. The decision to apply one or more enforcement methods must be based on the totality of the circumstances and must be consistently applied.
- E. Supervisors shall review each arrest report to ensure that proper action was taken under the circumstances.

V. ARRESTS WITH A WARRANT

A. Who may issue

An arrest warrant may be issued by any magistrate, judge, or clerk of any circuit court, general district court, or juvenile and domestic relations court (§ 19.2-71).

B. When the warrant may issue

§ 19.2-72 provides that the person having authority to issue an arrest warrant shall first examine on oath any complainant or other witnesses and, if probable cause exists, issue the warrant.

C. What the warrant contains

A warrant commands the accused to appear before a judge or magistrate at a stated time and place. The warrant names the accused or gives a description if his or her name is not known, describes the offense and names the violation, and bears a judge's signature. The warrant contains the complaint and sworn statements from witnesses.

D. Issuance of a summons instead of warrant

§ 19.2-73 provides for issuance of a summons instead of a warrant. Summonses impose the same requirements to appear at an appointed place and time as with a warrant.

E. Issuance and service of summons in place of warrants in misdemeanor cases

A summary of relevant provisions of § 19.2-74 follows.

1. Officers shall issue summonses for offenses committed in their presence when the offenses violate local ordinances, are Class 1 or 2 misdemeanors, or any other jailable misdemeanors.
2. Officers shall issue summonses for Class 3 or 4 misdemeanors or any other non-jailable misdemeanors if proper identification of the suspect has been established.
3. Persons to whom summonses have been issued shall not be held in custody for the purpose of complying with the Central Criminal Records Exchange (CCRE) reporting until after an adjudication of guilty. Booking procedures at the time of a physical arrest, however, allow the taking of fingerprints or photographs.
4. Any person refusing to give a written promise to appear under the provisions of this *Code* section shall be taken immediately by the arresting or other officer before a magistrate or other appropriate issuing authority. The officer shall notify the on-duty supervisor immediately.
5. Persons issued summonses for traffic violations under Title 46.2 shall be released upon a written promise to appear unless the exceptions listed in § 15.2-74 apply.

F. Copy of process to be left with accused

§ 19.2-75 requires that in most circumstances the officer shall leave a copy of the criminal process with the person charged.

G. Execution of arrest warrants

1. § 19.2-76 authorizes a law-enforcement officer to execute within his jurisdiction a warrant, capias, or summons issued anywhere in Virginia.

2. § 19.2-76 requires an officer who arrests a person on a warrant or capias from another jurisdiction to take the arrestee forthwith to an appropriate judicial officer serving the officer's locality.
3. Complete a VCIN/NCIC check on any person to whom a warrant, capias, or summons was issued before releasing them.

H. Escape, flight, and pursuit; Arrest anywhere in the state

1. § 19.2-77 allows an officer, with or without a warrant, to pursue anywhere in Virginia an escapee from custody. If the officer is in close pursuit, he or she may arrest the suspect wherever he is found.
2. If the arrest is made in an adjacent county or city other than the one from which the suspect fled, or within one mile of the boundary of the locality from which the suspect fled, then the officer shall deliver the suspect to the judicial authority of the adjacent jurisdiction.
3. § 19.2-79 authorizes a law-enforcement officer from any other state or the District of Columbia to pursue a fleeing felon into Virginia and take the suspect into custody as if the suspect had committed a felony in Virginia. Foreign officers shall immediately take the arrestee to a local judicial officer to determine the lawfulness of the arrest.

I. Exemption of such witnesses from arrest or service of process

§ 19.2-280 states that persons coming into Virginia in obedience to a summons to testify shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons. The same provision applies to a person traveling through Virginia in obedience to a summons from another state.

J. Arrest of suspect inside dwelling

1. If an officer wishes to arrest a suspect inside a residence, the officer must first obtain an arrest warrant. The officer must have a reasonable belief that the suspect is inside the residence. If the residence belongs to the suspect, only an arrest warrant is required. If the dwelling belongs to someone else, the officer must obtain a search warrant as well.
2. A search warrant is not required if the officer is in hot pursuit or the owner of a residence consents to the officer's search for the suspect.

K. Return of warrant

Upon executing the warrant, the arresting officer shall note the date of execution on it, then return it to the court, less copies given to the arrested person.

VI. ARREST WITHOUT A WARRANT

A. Authority

The search and seizure provision of the Fourth Amendment protects citizens from the arbitrary and oppressive interference with privacy by law enforcement officials. Further, officers must have probable cause that a crime has been committed, and that the person to be arrested has committed the crime. See GO 2-1 on constitutional safeguards and GO 2-2 on search warrants.

B. When warrantless arrests may be made

To summarize § 19.2-81, an officer may make a warrantless arrest:

1. When a person commits any crime in the officer's presence (or most traffic violations under § 46.2).
2. When the officer has reasonable grounds or probable cause to suspect any person of having committed a felony not in his presence. (The arrest must be made in a public place.)
3. At the scene of any motor vehicle or boating/watercraft accident when the officer has reasonable grounds to believe, upon personal investigation, that a crime was committed by any person present.
4. At the scene of an arrest for boating under the influence which was observed by another officer.
5. At any hospital or medical facility to which any person involved in a motor vehicle accident has been transported, provided the officer has reasonable grounds to believe, based upon personal investigation, that a crime has been committed by that person.
6. When any person is charged with a crime in another jurisdiction and the officer has received any of the following:
 - a. A photocopy of a warrant.
 - b. A telegram.
 - c. A computer or facsimile printout.

- d. A radio, telephone, or teletype message which gives the name or a reasonably accurate description of the wanted person and the crime alleged.
- 7. When the officer receives a radio message from the department or any other law-enforcement agency in Virginia for an alleged misdemeanor not committed in the officer's presence (provided a warrant for the offense is on file).
- 8. When the officer has probable cause based upon a reasonable complaint of a misdemeanor not committed in the officer's presence involving shoplifting, carrying a weapon on school property (§ 18.2-308.1), assault and battery, destruction of property, brandishing a firearm in violation of § 18.2-282.
- 9. In case of destruction of property (§ 18.2-137) when the property is located on premises used for commercial or business purposes.
- 10. Under §§ 19.2-81.3 and 19.2-57.2, officers may arrest without a warrant in cases of assault and battery against a family or household member and for violations of protective orders, regardless of whether the violation occurred in the officer's presence, provided the officer has probable cause. See GO 2-32, domestic violence.
- 11. Any officer or private citizen may make a warrantless arrest upon reasonable information that the suspect has been charged in a court of any state with a felony (§ 19.2-100).

C. Actions upon arrest

- 1. Upon arrest, the officer shall serve a copy of the warrant on the accused. The warrant itself may be a photocopy of the warrant, telegram, computer or facsimile printout, or teletype message.
- 2. The arresting officer shall bring the accused before the magistrate for bail hearing (§ 19.2-82).
- 3. If the person is arrested upon a charge in a county or city contiguous to *[your jurisdiction]* in which the charge is to be tried, the arresting officer may deliver the accused to the custody of a law-enforcement officer of that jurisdiction or the officer may bring the accused before the magistrate.
- 4. The magistrate shall conduct a bail hearing and set bail or secure bond if appropriate just as if the accused had been arrested on the warrant from another jurisdiction (§ 19.2-123). The officer shall not request the issuance of any arrest process such as duplicate warrants or fugitive warrants based on the charge in the other jurisdiction within Virginia.

5. The arresting officer shall contact the law- enforcement officials where the charge was made and inform them that the accused has been arrested based on the teletype message (or other arrest document), and if not bonded, ascertain when a representative will arrive to transfer the accused back to the locality having trial jurisdiction.
6. Once the arrest has been made, the officer shall ensure that the arrestee's name has been removed from NCIC/VCIN.
7. If the suspect is arrested under a copy of the original warrant, the officer shall request dispatch to contact the originating agency via VCIN. The message shall state that the suspect has been arrested under a warrant from the originating agency's jurisdiction and shall request that the original warrant be marked "served."
8. Complete a VCIN/NCIC check on any person to whom a summons was issued before releasing them.

D. Juveniles

Refer to GO 2-29 concerning handling of juveniles.

E. Summonses

1. Per § 19.2-74, an arresting officer shall issue a summons to appear at a time and place specified in such summons whenever any person is detained by or in the custody of an arresting officer for any of the following:
 - a. Any offense committed in the officer's presence which is a violation of any county, city, or town ordinance, or any Class 1 or 2 Misdemeanor, or any jailable misdemeanor.
 - b. An arrest on a warrant charging an offense for which a summons may be issued, when specifically authorized by the judicial officer issuing the warrant.
 - c. A violation of any county, city, or town ordinance, or any Class 3 or 4 Misdemeanor, or any other non-jailable misdemeanor.
2. If, after issuing a summons for (a) above, the suspect continues the unlawful act, then the officer shall immediately take him or her before a magistrate.
3. If the officer believes that the suspect is likely to disregard a summons, or may cause harm to himself or another person, then the officer may take the suspect immediately before a magistrate.

4. When release on a summons is appropriate for an offense requiring reporting to CCRE, the arrested person shall not be photographed or fingerprinted before release. Rather, this processing shall be accomplished only upon a conviction (see § 19.2-387, -388, and -390).
5. Complete a VCIN/NCIC check on any person to whom a summons was issued before releasing that person.

F. Summonses: Public intoxication

§ 19.2-74 controls the procedure for arrest for public intoxication (§ 18.2-388). The arresting officer may issue a summons to the accused rather than taking him or her into custody. When the officer believes that the inebriate is likely to disregard the summons or to harm him- or herself or others, then the inebriate may be arrested and incarcerated for that offense if necessary. See GO 2-12 for further details. ***[If your jurisdiction has a public inebriate center, outline the referral procedures in lieu of arrest here.]***

VII. POST-ARREST PROCEDURES

A. Constitutional considerations

Refer to GO 2-1 and GO 2-5 for a discussion of search guidelines and searches incident to arrest.

B. Warrants and booking

If the arrested person is not released on a summons or is charged with a felony, officers shall observe the following procedures:

1. Transport the suspect to the magistrate's office to be formally charged, if the warrant has not been obtained.
2. The officer shall call the warrant clerk to obtain a document control number for the warrant. ***[Note: This procedure varies widely depending on local circumstances. Substitute your procedure here.]***
3. If the warrant was obtained before the arrest and a summons cannot be issued, transport the suspect to jail and begin booking.
4. Read the charge on each warrant to the suspect.
5. Complete a Virginia Uniform Summons for each adult arrest.

C. Injury before or during arrest

If a person receives an injury before or during an arrest and either requests medical attention or, in the officer's judgment, medical attention is needed, officers shall transport the suspect or arrange for his or her transportation to the hospital for an examination before booking.

D. Processing of paperwork

[Outline here the procedure for documenting arrests. Include a provision for supervisory review and approval of reports. Processing and routing procedures should be outlined concerning:

Offense reports.

Booking forms.

Fingerprint cards.

Photographs.

CCRE reports.

Copies of summonses.

Copies of warrant.

Bond papers.

Jail committal forms.

In the case of juvenile offenders:

Petitions.

Detention orders.]

E. Further processing

1. If bond is allowed, the magistrate completes a bond certificate which is attached to the warrant(s), and the person is allowed to leave after meeting the required bond.
2. If bond is not allowed or cannot be made, the person is then committed to jail by the magistrate, who then completes a committal form and attaches it to the warrant whereupon the arrested person is placed in jail.
3. Items seized as evidence shall be tagged and returned to the departmental evidence locker. See GO 2-15 concerning evidence processing.

VIII. RELEASE FROM ARREST

A. Legal background

1. Officers may encounter a circumstance where probable cause develops to arrest a person for an offense, only to find out shortly thereafter that the person under arrest did not commit a crime, or that the event was not a crime.

It is imperative, then, that the officer end the arrest process immediately to avoid becoming liable for false imprisonment.

2. The attorney general has issued an opinion that, in the event that the circumstances under (1) above occur, officers shall discharge the person from custody without taking him or her before a magistrate.

B. Procedure

1. If the arresting officer determines that probable cause no longer exists to arrest a suspect, and the officer is satisfied that the person under arrest either did not commit the crime or that the crime did not occur, then the officer shall release the suspect.
2. When an officer releases a subject from arrest, he or she shall return the person to the place of the arrest, if the location is safe. The officer shall not release the person along the roadside. If a vehicle has been towed, the vehicle shall be returned to the operator/registered owner unless it is required as evidence, or some other legal authority assumes custody of the vehicle.
3. Upon releasing a person in this manner, the officer shall immediately contact the on-duty supervisor and advise him or her of the incident.
4. To protect him- or herself and the department, the officer shall document in an incident report:
 - a. The date and time of arrest.
 - b. The person arrested (name, address, date of birth, race).
 - c. The location of arrest.
 - d. Probable cause for the arrest and the specific charge(s).
 - e. The location and time of release from arrest and whether the person was transported.
 - f. The reasons or discovery of information which led the officer to release from arrest.
 - g. Any witnesses to the alleged crime, or to the fact the person arrested was allegedly involved.
 - h. Whether force was used in making the arrest, and if so, the nature of any forced used and the consequences (including medical aid).

5. If the officer makes an arrest based on probable cause, the arrest is lawful. Probable cause must continue to exist through the appearance of the officer and arrested person before the magistrate. If not, the officer must release the person as soon as practicable.

IX. IMMUNITY FROM ARREST

A. Legislative immunity

1. Members of the United States Congress are exempt from arrest when Congress is in session, or when they are en route to or from congressional business, **except** for traffic summonses. (Article I, Section 6, U.S. Constitution)
2. Members of the Virginia General Assembly are exempt from arrest during a legislative session (or for fifteen days before the beginning or after the ending of any session) except in cases of treason, a felony, or a breach of the peace. (Article IV Section 9, Constitution of Virginia)
 - a. No member or clerk of the General Assembly or the lieutenant governor is exempt from arrest or imprisonment for treason, a felony, or a breach of the peace.

B. Diplomatic immunity

1. While a person claiming diplomatic immunity may present any number of identification papers, the only one that is indicative of the level of privilege and immunity is a card issued by the U.S. State Department. The holder's level of immunity will be indicated on the card. If a person claiming immunity does not possess this card **and** the incident involves a criminal offense, officers may detain the person either at the scene or at the department long enough to verify official status.
2. Upon exhibiting proof of diplomatic immunity, persons shall be released upon being stopped for a misdemeanor traffic violation. If questions arise about this procedure, or if an arrest for a felony is necessary, call and advise the U.S. State Department Office of Security (202-647-4415, days, or 202-647-1512, nights and weekends).
3. When encountering a criminal suspect who claims diplomatic immunity, officers shall first take reasonable measures--including pat-downs or other legal searches--to ensure safety to the public or other officers. Verification of the diplomatic claim shall take place after a danger has been neutralized. A criminal investigation shall proceed as if no valid diplomatic immunity claim has been made. Interviews, interrogations, seizures of evidence, or issuance of warrants shall proceed per departmental procedure. In a criminal

investigation, the chief/sheriff shall remain in contact with the State Department.

4. **Regardless of the claim of immunity, in any case where officers arrest or detain foreign nationals, the suspects shall be advised of their right to have their consular officials notified.** In some cases, this notification is mandatory. Note: the list of countries which require mandatory notification of consular officials in the event that one of their citizens has been arrested is extensive. The State Department shall be contacted for guidance.